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An A C C O U N T at Large, of the
PROCEEDINGS at

The Sessions - House

In the *Old-Bayly*, on the 24 of *November* 1681. In
Relation to the Bill of *High Treason*, prefer'd against the

Earl of Shaftsbury,

Which was foun'd *Ignoramus*.

*Giving an Account of the JURY, the Evidence, the Pa-
per read in Court, and all the most Remarkable Passa-
ges that hapned during the whole Proceeding.*

AS ALSO

The Proceedings at the Kings-Bench-Bar,

at *Westminster*, on the 28 past: giving an Account of
the Bailing of the Right Honorable *Anthony* Earl of
Shaftsbury, *William* Lord *Howard* Baron of *Escrick*;
and also *Edward Whitaker*, *John Wilmore*, and *Sam-
nuel Wilson*; with the Names of such Persons of Ho-
nour, and others, that became Sureties: together with
many other Remarkable Passages.

ON the 24 day of *November* 1681. by virtue of a Special Commis-
sion of *Oyer and Terminer*, a Court was held at the Sessions-House in
the *Old-Bayly*, where most of the Judges being present, the Jury
summoned to attend, were called, being about 40 in Number, all
worthy Gentlemen and substantial Citizens, out of which these fol-
lowing were Sworn, according as the Law in such Cases requires, viz. Sir *Sam-*

el Bernardiston, Foreman, Thomas Papillon, Esq; John du Bois, Esq; Mr. Hearle, Edward Rudg; Humphry Edin, John Morrice, Michael Godfrey, Edmund Harrison, Joseph Wright, John Cox, Thomas Shepherd, Thomas Parker, John Flavel, Leonard Robinson, William Empson, Joseph Richardson, John Lane, Mr. Kenrick, Mr. Hall; After the Jurors were Sworn and had taken their Places, and the Commission by which the Court sat, Read; the Lord Chief Justice Pemberton told them, Though he expected the Charge might be given before he came (it not being usual for him to give it in that Court,) but finding it was not delivered, he thought it very convenient, for their better Information, to let them understand what they were to Enquire into. After which his Lordship proceeded to open the Statutes of the 25 of Henry the III. and that of the 13 of His present Majesty, laying open from Point to Point, the true intent and meaning of the said Statutes, and then told them, That by Virtue of the Commission by which they were Impannell'd and Sworn Jurors, they were to Inquire of all Treasons, Misprisions of Treason, Felonies and the like; and that they were to find according to the Evidence that should be given in behalf of the King, and that unless they knew any thing of their own certain knowledge, they were not to question the Credit of the Witnesses, &c.

After which an Indictment of High-Treason against Anthony Earl of Shaftsbury was read, the purport of which was, That he the said Anthony, Earl of Shaftsbury, as a false Traytor of our Sovereign Lord the King, had VVilfully, Maliciously and Trayterously Conspired and Imagined to compass the Death of our Sovereign, him to Depose, Murther and put to final Destruction, by Combining with several False Traytors to raise Rebellion, and Levy VVar within His Majesties Dominions, and that in Order thereunto several Consults had been held, not only at his own House, but likewise in several other places within the City of London, where, by several express words, the same had been signified.

After the Indictment was read, the Jury went out to consider of the Coppy of their Oath, and to conclude about the Examination of the VVitness, then returning they made it their Request to the Court, That they might have the Examination of the VVitnesses in private, by reason several of them were not otherwise well satisfied in their Oath, which expressed That they should keep their own and the Kings Secrets, which they said they could not do, if a Publick Examination was made; Mr. Godfrey, one of the Jury Declaring, That it had not a little troubled him, That the Evidence upon the Tryal of Plunket, were admitted to stand together to hear each others Evidence; he being upon the Jury that found the Bill against him; but the Kings Council opposing this their Request, the Court told them, It could not be granted; for that it was the usual Custom, some years since, to Examine all Evidence in Court, but it growing too tedious, they were forced to dispence with their Examination in private; Then they desired, That if they might not Examine them in private, that it might be Recorded That their Request was denyed in that particular; but the Court answered, That they could not Record any such thing, but that there were VVitnesses enough to take notice of what had passed; but that they would order the VVitnesses to be put apart, if they desired it, and brought one by one, and after they had given their Evidence they should again Examine them, and ask them any Lawful Questions they pleased; After which they desired to have the VVarrant of Commitment, which the Court told them could not be had, for that

the Lieutenant of the Tower would be sure to keep That to indemnifie himself: and it was not in their power to oblige him to deliver it, then they acquiescing with the pleasure of the Court, the Kings Counsel ordered the VVitneses to be Sworn, the first of which was Mr. *Brainwhite* one of the Clerks of the Council, who swore, that the Paper he then produced in Court, was the same Paper that was delivered him by Mr. *Gwin*, another of the Clerks of the Council, who was sent to search the Earls Papers on the 2 of July, at which time he was Committed, and That he delivered it into the Possession of Mr. Secretary *Jenkins*, not permitting any before to have it in their Possession from the time it was delivered to him; Next Mr. Secretary *Jenkins* gave Evidence, That he knew it to be the same Paper that was delivered to him by Mr. *Brainwhite*; Then Mr. *Gwin* being Sworn, Declared, That he being sent by Order of Council to search the Earls Papers and having received the Keys of his Closet, found the said Paper amongst several others in a Velvet Bag, and afterwards put it into a Trunk with the rest of the Papers, and by the Earls Order set his own Seal upon it, and caused it to be brought to the Council Chamber.

Then the Court gave Order for the Reading the said Paper, which was done accordingly, the Substance of it being, That there had of a long time been and now was, a Hellish PLOT carried on by the Papists to destroy the Protestants and Introduce Popery and Arbitrary Government; and that it was Countenanced, Abetted and Encouraged by *J. D. of Y.* who having most of the Places of Preferment and Trust, as well Ecclesiastical as Civil, at his own disposal, he disposed of them to whom he pleased, to the great strengthening of his Party and Encouragement of the Papists; whose hopes solely depended on him: and that the often Prorogations and Dissolutions, were occasioned by reason they endeavoured to hinder this Inundation of Popery. That the said *D.* had wasted the Ammunition and Treasure of the Nation, and that they were resolved to have a Bill passed to expel him the Kingdom, and Exclude him from the Succession to the Crown, &c. After which, it appearing, as if it had been written to some person, it went on to Counsel him, not to forget his Solemn Promise to all true Protestants, nor desist from Subscribing to what was under-written, which was a kind of an Association, the Substance of which follows:

I A. B. Promise and Vow to defend the Protestant Religion against Popery, and all Innovations upon the Liberty of the Subject, and all Arbitrary proceedings: That J. D. of Y. should be Deposed in regard he has declar'd for Popery, and That they would by force destroy all such as should oppose or hinder this their Solemn Association, and that least the D. sign should be hindered by Giddyheaded, or self ended Persons; They should apply themselves to the Parliament, and be subject in all things to such Officers as they should think fit to set over them, &c.

After this the Evidence were Sworn one by one, as they were called, the next that was Sworn, after those that were before mentioned was *John Routh*, who gave Evidence, that being acquainted with Captain *Wilkinson*, and having frequent discourse with him about divers affairs, especially about his going with him to *Carolina*, he told him, there would be advancement sufficient at home for such men as he was, for he would see strange Alterations e'r long, and that if he would provide himself a Horse and Arms, and List himself under Him, he would give him a Horse for his Man, for as much, as he was to Command a Troop of 50 for the Earl; and af-

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ter such like Discourses having found him pliable, he introduced him into the Earls presence, who amongst other things told him, That he had perused the List of the Members chosen to serve in Parliament, and found that they were such as would insist upon the Bill for Exclusion of the D of C. upon the Repealing the 35 of *Elisabeth*, and the bringing a Bill, for the Uniting the Protestant Dissenters. In which they were sure to be opposed, by which he foresaw a Division would Arise, and therefore all the Members would come Armed, and well Attended, himself being to have the Attendance of 50 Gentlemen, which he designed should be Commanded by Captain *Wilkinson*, and every one of them to have his Man; and that if the King would not comply with their Demands, they would oblige him to it by Force, for the greatest part of the Nation were on their side, and although he had called the Parliament at *Oxford*, thinking to over-Awe them with his Guards; yet their Force would far exceed them. upon which, being asked, Whether these Men were Listed? he said, Yes, and that they lay about *London* concealed, till such time as they should receive Orders to repair to *Oxford*; but the surprising News of the Dissolution of the Parliament, which was not suspected so soon, caused them to disperse; he farther Swore, That the Earl declared, That the King had a design to bring in POPERY; and That he was a great Encourager of Papists.

Brian Hains deposed, That the Earl of *Shaftsbury* told him, That the King was a man of no Faith, and therefore not to be Trusted, That he was an encourager of Popery, and that he might be deposed, if he refused to comply with his Parliament; and, That there was a design on foot, to extirpate the Royal Family, and turn the Kingdom into a Common-wealth, after the manner of *Holland*, when as the People might enjoy more Liberty, and live Happier; That the Earl (upon some discourse about his Majesty) asked him, Whether he thought there was no other Family in *England* that had right to the Crown? to which he answered, He knew none: whereupon his Lordship replied, the D. of B. in right of his Mother, who descended of the *Plantagenets*, ought to be Baron of *Ros*, and had as much right to it, as any of the Family of the *Stuarts*; That the Earl ordered him to draw up an Information against the Earl of *Danby*, to accuse him as privy to the Murther of Sir *Edmundbury Godfrey*, telling him, That he would procure him a Pardon, and, That if the King denied to grant it, all the Nation would be up in Arms, that most of the people about *Wapping* and *Aldersgate-street*, would surely stand for his side, and farther he Deposed, He did draw up an Information, but never Swore to it, &c.

John Smith being Sworn, before he gave his Evidence, desired to speak a word or two in his own Vindication, and then declared, That it had been reported he was SUBORNED: against which he made several Protestations, whereupon the Court ordered him to give his Evidence: when as he Deposed, That he had been with the Earl several times, and that one night he sent for him, from Mr. *Berkels* Club, and held a long discourse with him about the Methods he had taken to alter the Government, and about the Meeting of the Parliament at *Oxford*, and how the design went on, and that he feared *Fitz-Gerald*, would turn about to the Court party, and by that means induce others to do the like: which might be disadvantageous to the whole design: therefore he desired him to keep them steadfast, he likewise Deposed: That at several other times he had been to wait upon his Lordship, and had had Discourses of the like Nature, and that several Sums of Money had been distributed, and large Promises made, &c. The

The other Evidences were *Edward Turberville*, *Edward Irie*, *John Macknamarre*, *Denis Macknamarre*, and *Bernard Denis*, who Deposed that the Earl should say, He would not give over till he had turned this Kingdom into a Common-wealth, after the manner of *Holland*; and that the King deserved as much to be Deposed as *Richard the Second*; and that as his Father had been led by a Popish Queen, so had his Majesty by Popish Counsels; that several Lords who were named must be removed, and that the *Dutchess of Mazarine* was his Cabinet Counsel; that the Earl incited *Bernard Denis* to go over into *Ireland*, & bid the *Irish* that were his Friends, to be ready to stand for their Liberties, which the said *Denis* Deposed were about 400 in all of the same Name. And farther, That he promised him a Benefice, he being a Secular Priest, and that in the mean time he should wear a Black Gown. And farther, some of them Deposed, That the Earl perswaded them to Swear against the Queen and the Duke of *Tork*, promising them large Rewards. That he said the King was Popishly inclined. That they were all of them to be preferred according to their Capacities, so soon as the Design had taken effect; with many other particulars too tedious to recite. When these before-mentioned had given their Evidence, *Mr. Fitz-Gerald* was called; but *Mr. Attorney-General* saying there was enough, he did not appear to give Evidence.

Having thus far proceeded, the Court directed the Jury to go and consider of what had been Sworn, and then Adjourned till after Dinner, when as the Judges (who were Eleven in all) being seated, the Evidence were brought in one by one, to be Examined to such particulars as the Jurors should think fit, and ordered to answer the same without any Repartees, or hasty Replies; the Court declaring, That they believed the Gentlemen of the Jury such, as they would not ask them any thing, but what was convenient, and to the purpose.

Booth being called and set up, he was demanded upon what account he came to have such Discourse with the Earl; he said, by being introduced by *Wilkinson*, and upon his recommendation that he was a man fit for such service. Then being asked whether he was Listed, he replied, yes, and that he had procured him a Stone-horse, and furnished himself with other necessaries. Then he was asked whether he had not been Condemned for Clipping; and whether he had ob-

tained his Majesties Pardon to the latter ? he answered in the Affirmative ; but as to the former, he said he was not bound to declare. Then being asked whether he was a Minister in Orders, or whether he had a Benefice ? he said he had one formerly, but not at present ; and as to his being in Orders, it was nothing to the matter in question. These and many such like questions were demanded, as to time and place, when and where such discourse should happen ; to which (as he said) as far as he could charge his memory, he answered ; and being asked why he had not made the Discovery sooner, he said, he thought not to do it at all, for that he thought it was a matter too ponderous for him to carry on alone ; but when he found there were other Witnesses to the same purpose, he thought it time to reveal his knowledge.

Dennis Macknamarra being cross Examined, and several questions put to him, where the Earl did speak such and such words, he said in his Dining-room, at his own house in *Aldersgate-street* ; then was he asked where his Dining-room stood ; he replied, Up one pair of stairs on the right hand ; and in that, as the Jury observed, he was mistaken, for the Dining-room at his said House, is right forward below stairs. Being asked whether any body was by when the words were spoke, or whether they were spoke aloud, or whispered ; he said there was no person by, and that he spoke it aloud ; but the Jurors perusing their Notes, found some variation as to that particular ; the words were, that the Earl of *Shaftesbury* should say, He would take the Crown off the Kings Head and put it upon his own, and so reduce the Kingdom to a Republick.

John Smith being asked whether he went, or had not gone by any other Name, he replied, That he being a Popish Priest, was forced to make use of sundry Names for his own security, which was the usual way of all Popish Priests ; then being demanded who induced him to give his Information, he said no body, he did it voluntarily, without the least incitation thereto, and that he delivered it to Mr. Secretary *Jenkins*.

Then *Bernard Dennis* being brought in, he was examined or rather interrogated upon the Evidence he had before given, as indeed they were all. The Jury asked him how he came to be so well acquainted with the Earl of *Shaftesbury* : He said, Upon the account of the design that was carrying on, and that he had had several Conferences with his Lordship alone ; and that he had told him the People of *Ireland* were

were hardly dealt withal, and that under the Government of a Commonwealth they should live far better, or to that purpose. Then being demanded whether he had been in *Ireland* to speak to his Kindred he had formerly mentioned, he said, He had made some of them acquainted with what was intended. Being asked whether he was to find them Arms, he said, No, he was not in a condition to do any such thing.

Upon these and such-like Questions, were the rest interrogated ; who affirmed, that they had given their Informations (voluntarily, and without any compulsion) to Mr. Secretary *Jenkins* ; and that they had no prejudice against the Earl, but did it upon the account of their Conscience. Some of them being demanded, whether in any other places, or at any other time than what they had mentioned, they had heard the Earl speak any treasonable words ; to which they answered, No, not as they remembered.

Upon the full hearing of the Witnesses aforesaid, about eight hours were spent, whenas the Court summing up what had been sworn, the Jury went out to consider of the Evidence. When upon some of the Witnesses complaints to the Court, that the People had abused them, and they went in danger of their lives ; the Lord Chief Justice ordered the Sheriffs, at their peril, to secure them with a sufficient Guard through *Temple-bar*, and then they were out of the City : for if they came to any harm, they should answer it, or to that effect. Whereupon the Officers of both Compters were sent for to attend with their Javelings ; who accordingly came and received them under their protection : yet could they scarcely defend them from the fury of the Rabble, who run after the Coach in which they were, calling them, *Tories*, *Bogtrotters*, and the like ; and in *Fleet-street* endeavoured to pull them out of the Coach, &c.

After the Jury had considered the Evidence about the space of an hour and half, they returned, and delivered the Bill to the Clerk ; who after he had asked them whether they were all agreed, and content that the Court should mend any matter or false Latine, altering no manner of substance, without their privity, he told the Court, That it was found *IGNORAMUS*. Upon which, Mr. Attorney General prayed the Jury might be recorded. Upon the Bill's being so returned, there was such a Shout, not onely in the Court, but in the Yard, that there was no hearing any word for the space of a quarter of an hour. When the noise being

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pretty well filled, the Court demanded whether they did not think the words Treason? they answered they did, but could not credit the Evidence, or to that effect. And after some other words had passed, the Court Adjourned till the Fifth of February next. One thing more is to be observed, the shout beginning in the Sessions-house, was carried quite through the City in less than an hours time, and within two hours afterwards, Bonfires were made in most streets of the City and Liberties. The Bells rung in some places, and the Rabble obliged the Coachmen to put off their Hats to the fires, and say, God bless the Earl of Shaftesbury; a thing which has not been known upon any such occasion.

November 28. 1681.

His being the last day of the Term, the Right Honourable Anthony Earl of Shaftesbury, William Lord Howard Baron of Esrick, Mr. John Wilmore, and Mr. Edward Whittacre, were brought from the Tower of London by the Lieutenant and a Guard of Halberts, in order to their being Bailed, according the Act of the 13th of his present Majesty. Whereupon Mr. Williams moved the Court in the behalf of the Earl, and satisfied them that Mr. Attorney General had been waited upon on that occasion; whereas the Warrant of his Commitment for High-Treason, dated the second of July, was read and ordered to be filed. After which his Lordship insisted upon being set at liberty without giving in Bail, saying, That he had had hard measure, and had been falsely scandalized by having such things laid to his charge as he was altogether ignorant of. But the Court declaring that they could not set him at liberty without his giving Bail, his Lordship nominated his Grace the Duke of Monmouth, Sir William Cooper, Sir John Sidaam, Francis Charlton Esq; who were bound severally in the Penalties of 1500 l. a piece, and his Lordship in the sum of 3000 l. to appear the first day of the next Term, and not to depart without leave of the Court.

Next the Lord Howard's two Warrants of Commitment for High-Treason were read, being dated the 14th of June, and ordered to be filed. His Lordship alleadged, that he ought to have had the benefit of the last Term, there being a Bill preferred against him; but the Court told him, they could take no notice of that, by reason it was withdrawn. Then his Lordship named his Bail, which were, the Right Honourable the Earl of Kent, the Lord Clare, the Lord Gray, and the Lord Herbert; the penalties being exactly as the former. Then Mr. John Wilmore's Warrant of Commitment being read, and ordered to be filed, Mr. Attorney declaring he had nothing against him, his Bail were called into Court, whose names are as followeth: James Rawlings, William Jacob, Nicholas Grigson, and Alexander Probe; who were bound in 1500 l. a piece, and himself in 3000 l. Then Mr. Edward Whittacre (whose Warrant of Commitment being read and filed, as the former) produced his Bail, viz. John Johns, Zachariah Bourn, Samuel Smith, and Thomas Wicks; being all bound in the aforesaid Penalty for him to appear the first day of the next Term, and so *die in diem*, till the said Bail should be discharged. Upon my Lord Howard's, Mr. Wilmore's, and Mr. Whittacre's refusing to pay such Fees as the Lieutenant demanded, he complained to the Court; but they told him he must take his course at Law; they could not oblige them to pay it, unless they were willing: Upon which my L. Howard said, That he knew no such Fees due as was demanded, nor would he pay them, unless they appeared due upon Trial and offered to give an Appearance; which being accepted, he nominated Mr. R. Goodenough his Attorney. The like did Mr. Wilmore. But Mr. Whittacre being an Attorney of the Common-Pleas, the proceedings against him were referred to that Court. After this, Samuel Wilson was brought from the Gate-house, and bailed accordingly.